

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SHAWN MCCARTY, et al.,

Plaintiffs,

v.

SMG HOLDINGS, I, LLC, et al.,

Defendants.

Case No. [17-cv-06232-JD](#)

**ORDER RE MOTION TO AMEND,  
DISCOVERY DISPUTE, AND CLASS  
CERTIFICATION SCHEDULE**

Re: Dkt. Nos. 68, 69, 76

**I. MOTION TO AMEND**

Although the last day under the Rule 16 scheduling order to add parties or amend pleadings was May 22, 2020, Dkt. No. 67, plaintiffs have asked for leave to file a third amended complaint which would “add David Babcock as an additional plaintiff and class representative for the Stockton putative class of SMG.” Dkt. No. 69 at 3. The request is granted.

Good cause warrants amendment at this time. The primary consideration for “good cause” under Rule 16 is diligence. *See Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). A question could be raised about plaintiffs’ diligence here. Plaintiffs acknowledge that they first became aware of defendants’ contention that plaintiff McCarty was not employed by SMG at the time of filing (and consequently the attendant possibility that they might need to add an additional class representative) in June 2019. Dkt. No. 72 at 6-7. Plaintiffs did not seek leave to amend to add an additional plaintiff until July 2020. Dkt. No. 69. Even so, plaintiffs’ amendment request missed the May 22, 2020 deadline by a modest amount of time. Some consideration must also be given to the impacts of the pandemic. On balance, the Court finds good cause under Rule 16(b) to consider the amendment request.

On the merits, the Court finds plaintiffs’ amendment request should be granted under Rule 15, which provides that “[t]he court should freely give leave [to amend] when justice so requires.”

1 This is especially true because plaintiffs seek only to add another plaintiff who has long been  
2 known to defendants, and not any new claims or defendants.

3 Plaintiffs' motion to amend is consequently granted. Plaintiffs are directed to file their  
4 third amended complaint on the ECF docket by December 16, 2020.

## 5 **II. DISCOVERY DISPUTES**

6 Plaintiffs filed a discovery letter raising a number of issues, including defendants'  
7 "deficient responses to plaintiffs' written discovery requests, depositions of defendants' Rule  
8 30(b)(6) witnesses, the *Belaire-West* notice process, and the deficient production of class  
9 timekeeping and payroll data." Dkt. No. 68 at 1. In response, defendants represented that they  
10 would serve responses to plaintiffs' discovery requests, continue their efforts to gather and  
11 produce timekeeping data, continue meeting and conferring with plaintiffs on a *Belaire-West*  
12 notice, and produce witnesses on the remaining categories in plaintiffs' Rule 30(b)(6) deposition  
13 notice. Dkt. No. 75 at 1-3. Defendants also stated their commitment to "working in good faith  
14 with plaintiffs toward resolving any pending discovery disputes informally." *Id.* at 3. A  
15 stipulation that was subsequently filed jointly by the parties represented that they had "finalized  
16 the mutually-agreeable *Belaire-West* notice and are in the process of retaining a third party  
17 administrator to distribute the notices to the putative class members." Dkt. No. 76 at 1.

18 The Court appreciates the parties' cooperative spirit in informally resolving their disputes.  
19 The parties are directed to jointly update the Court by December 18, 2020, if there are any  
20 remaining disputes needing the Court's attention.

## 21 **III. CLASS CERTIFICATION SCHEDULE**

22 The parties have jointly requested 120-day extensions on plaintiffs' deadline to file their  
23 motion for class certification and all related briefing deadlines and the hearing date. Dkt. No. 76.  
24 Plaintiffs' motion for class certification was due to be filed by November 12, 2020. Dkt. No. 67 at  
25 1.

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1 The requested extension is too long. A 60-day extension of all dates is granted, with  
2 plaintiffs' class certification motion due on January 11, 2021. An amended scheduling order with  
3 the new class certification dates will issue.

4 **IT IS SO ORDERED.**

5 Dated: December 10, 2020

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JAMES DONATO  
United States District Judge